

COMMISSIONERS APPROVAL

CHILCOTT 

THOMPSON 

LYONS

PLETTENBERG (Clerk & Recorder)

Date.....April 30, 2007

Members Present..... Commissioner Greg Chilcott,  
Commissioner Alan Thompson and Commissioner Howard Lyons

Minutes: Beth Farwell

The Board met for a road department update. Present was Road Foreman Bill Meisner from the Road Department due to the Road Supervisors absence. Bill stated he is supposed to meet with Engineer Tom Hanson this week in regard to the Middle Burnt Fork project in Stevensville. They are working on developing a well field, close to Logan Lane. After that, they can finish the upper and lower parts of the road leaving the middle part for next year.

They are currently patching and working on culverts, one of which is on Bailey Lane, and the other one is at the bottom of Dutch Hill Road.

Bill had visited with Civil Counsel Alex Beal in regard to the Spang property. Bill stated this property needs more clean up and they are doing layout work to resurface Airport Road. Bill stated they had the bridge completed at the supply ditch at Stevensville Gravel Pit. Bill also noted there is an issue with contract for dust abatement. Bill explained in detail the problems with the contract and how he has been as accommodating as he could. The Board agreed with Bill advising him to work with Alex Beal in this regard.

Bill stated that they are still working on the budget. Commissioner Chilcott requested an update on the Darby Pit. Bill stated he doesn't know what to do in regard to this issue of not being able to utilize \$60,000 worth of gravel due to the Blueweed. Commissioner Chilcott explained the gravel can only be utilized as part of the hot mix due to the seed. Discussion followed as to other gravel options.

Commissioner Chilcott asked about the consumption of fuel. Bill indicated they are not using as much, because they are not hauling much. Commissioner Thompson had some observations regarding getting the men to work. Commissioner Thompson goes in about 8-8:30 a.m. and has seen the men stopping and getting coffee and lunch. It seems to him that it is inappropriate when you are supposed to be at work at 7 a.m. and they are stopping for coffee and lunch at 8-8:30 a.m. Commissioner Thompson stated the work is

not getting done. Commissioner Chilcott concurred. Commissioner Thompson has been driving by at 8:00 a.m. and has seen the employees leaving at 8:00 a.m. when they should already be out. Bill said that they had delays due to the 'suining of the trucks' as it takes 45 minutes. However, he agreed with the Board, the workers should be out of the yard by 7:30 a.m.

The Board met with Planning Director Karen Hughes for an update. Also present were Planners Tristan Riddell and Renee Van Hoven. Karen discussed the new fee schedule and the changes that had been made. Commissioner Thompson asked about the revenue generated from the new fees. Karen replied some of their revenues are down. They plan to address this issue in the budget process.

Renee is part of the subdivision review team and they are coming up with revisions for the road issues. They are working off of the updated list for county maintained roads. Commissioner Chilcott stated there has been a long debate over Meridian Road whether or not it is a county road. Discussion also included the overview of the public review draft for the revisions to the subdivision regulations. Karen noted the biggest change is the legal status of roads.

Karen also presented a progress report on the countywide zoning project. And considerations for zoning project enhancements. She explained in detail the various components of the enhancement options. Karen stated that this it to be used as focal points for enhancement proposals. Their goal is project management and staffing, outreach and development of similar activities. Commissioner Chilcott stated it is more efficient to work together. Commissioner Lyons stated there must be something to bring in money to the planning department. Commissioner Chilcott stated they are talking about grants. Karen asked the Board if this is the correct manner in which they would like her to proceed. The Board concurred and it was agreed Commissioner Chilcott will work directly with Karen on this project.

Karen asked how the Board would like to proceed in interviewing potential applicants for the Streamside Setback Committee. Commissioner Thompson he would like planning to assist in interviewing applicants but not sit on the board. All agreed.

Karen gave an update for Open Lands Program. The committee has done their bylaws, drafted criteria, and has a subcommittee. They are making good progress.

Tristan and Renee reviewed the changes on the subdivision regulations. Commissioner Chilcott stated they should look at the engineering contracts, including time frames for those reviews. Tristan reviewed the pre-application process and the language for preliminary Plat submittal (see attached). It was agreed a public hearing date will need to be advertised for these proposed changes.

Minutes: Glenda Wiles

The Board also met for a decision on the Golf Course Road settlement agreement as it pertains to the Arrow Hill and Hidden View Subdivisions. Present was Senior Planner Renee Van Hoven. Renee gave some back ground on the settlement agreement for the claims against the county for improvements required via the subdivision regulations. Arrow Hill Subdivision was over 21 lots and Hidden View was under 21 lots. Therefore, the Developer of Hidden View Estates Subdivision, Kent Kearns was to only pay a pro rata share, which he has already done. However, when the actual settlement agreement was prepared, it read that Kent Kearns would pay for the actual road improvements. Kent has paid the pro rata share and Hidden View has been filed for final plat. There appears to be a typographical error in the settlement agreement stating Kent needs to pay for the actual costs rather than pro rata. The County Attorney and Road Supervisor both say this is an error and Kent should not be responsible for this payment.

Kent stated both he and his Attorney Martin King say they learned about this last week.

Now present was Civil Counsel Alex Beal. Commissioner Thompson addressed the pro rata share on a heavily traveled road such as Golf Course. In reviewing the past history of the Arrow Hills settlement, he sees that Golf Course is a county standard road. That being said, he feels it is a reasonable conclusion to accept the Planning Staff's recommendation. Commissioner Lyons agreed with Commissioner Thompson.

Commissioner Chilcott asked Alex if this settlement agreement was approved by the court. Alex stated he is not sure the court has the responsibility to review this settlement agreement as it might not have reached that stage yet. Kent stated this settlement agreement did not go to District Court.

Commissioner Thompson made a motion to accept the recommended motion made by planning staff as follows:

- Kent Kearns not be billed for improvements to Golf Course Road because he has met his responsibility for road improvements, based on the following information:
  1. Kent Kearns has already met the Subdivision Regulation requirements by paying the pro rata share on Golf Course Road and the final plat for Hidden View Estates has not been filed.
  2. It is not clear to the Planning Department why the Settlement Agreement was written so that Kent Kearns would be required to go above and beyond the Subdivision Regulations by paying the actual cost of improvements to Golf Course Road instead of the pro rata share.
  3. The County Attorney's Office agreed that per the Settlement Agreement, Kent Kearns is responsible for paying the actual costs of improvements to Golf Course Road as invoiced by the County. The County Attorneys' Office also stated that the BCC may decide not to bill Kent Kearns for additional payment.
  4. David Ohnstad stated that since Kent Kearns has already paid the pro rata share on Golf Course Road, the Road and Bridge Department would not

object to a BCC decision that no additional payment be required from Kent Kearns.

Commissioner Lyons seconded the motion and all voted "aye".

In other planning business, Rence also addressed the Arrow Hill Ranch letter of credit which expires May 10<sup>th</sup>. The Developers have two items left (pay the fire department contribution and submit the 'as built' road plans) and they might not need to extend their letter of credit. However, if the Developer does need to extend the letter of credit, the Planning Staff will need a new letter of credit from the bank. It was agreed they may need to schedule a meeting to discuss and possibly approve of a new letter of credit sometime before the 10<sup>th</sup> of May.

In other business, the Board met with Marilyn Burton in regard to a proposed sawmill at Bowman Road and Highway 93 at the Christian Center. Numerous residents were also present. Marilyn stated this is a residential neighborhood. The sawmill will be bringing in logs, doing chipping etc. She stated this is not an appropriate place and it will create quite a bit of noise in this residential neighborhood. The residents knew Donaldson's Ready Mix was located there when they bought their house, but they had no idea this would happen. Several of the neighbors have their homes for sale. They still do not know if the Wal-Mart is coming in. Their home values are going down and one neighbor is on dialysis three times a week and this will be hard on her. Other neighbors were not able to be here due to work obligations. They hope something can be resolved so they will not have to deal with this.

Commissioner Thompson asked legal counsel if there is any recourse for the residents or the county. Alex stated not really. Countywide zoning can help when it is implemented, but in the mean time there are voluntary zoning districts in that particular area. Marilyn stated they are in the process of a voluntary zoning district and this area does fall into that district zone. They have been in the process for the past 4 months. Alex stated depending upon when the business started their plans, most likely they will be grandfathered in. The zoning district is the best option and unless there is something that is a health and safety issue or decay issue, there is nothing that prevents this private business from doing this.

Jim Riddle stated his son was in the Gulf War and now has asthma, and their mother-in-law has COPD. How does he make a formal complaint in this regard?

Morgan stated the sawmill will not be burning but they will have two warming barrels. Owner Dwayne Kirkland stated he is complying with DEQ regulations and he has talked to some of the neighbors. Many were rude to him when he approached them. He stated he wants to install an 8' fence which will help block out a portion of the sawmill from their view. Currently he has a short term agreement with Harris Himes and if it works out they plan on entering into a long term agreement.

Dan Zane lives there and there are numerous junk (piles of garbage, brush, trailers) and junk vehicles that has been dumped by Kirkland. An 8' fence would not help.

Richard Yurata asked if chain saws will be utilized. Dwayne stated they will run chain saws from 10 a.m. to 4 p.m., which he could run starting at 7:30 a.m. if he wanted to. But out of the kindness of his heart he will not do that.

Kathryn Jenkins asked who owns the property. Harris Himes stated he owns the property.

Harris Himes stated he is the pastor of Holy Ground. He stated neighbors 'mean those who work together'. He wants to give Dwayne a chance because Dwayne is an Iraq veteran. Harris stated he and Dwayne have followed all state and federal restrictions. He has also obtained insurance. If this gets to be an 'undoable' thing he will review the use of his property in this regard. Harris stated Dwayne has rights as does he the property owner, and he would like to work this out with the neighbors. In regard to the voluntary zoning district, he agreed this business would probably be grandfathered in or he would try to have his property opted out of this district. He hopes they get beyond the unnecessary and unfortunate issues that are being brought up by the residents.

Commissioner Thompson asked Dwayne if he has a business plan. Dwayne stated he has a short and long term business plans. He does not have much services but Harris has helped him.

Naomi Gerry stated she is concerned with her property values. She appreciates Harris's property rights but her concern is for her property rights. Harris is one person versus a whole neighborhood.

Kathryn stated all this sounds 'lovely', but she wonders if Dwayne were to build this saw mill across from the three Commissioners houses, would they be happy? This is a unique valley; from her house she can see the whole valley. More and more she sees people burning which pollutes the air. This opens the door for box stores to line up on Highway 93. This all ties into the zoning issue. She lived in Portland and the smoke and traffic was unbearable. The first few years the valley was beautiful but little by little this valley is deteriorating. She advised the Commissioners they need to look for the citizens, and they are not doing it. She stated this is not fair, because it is a residential neighborhood and commercial enterprise is invading their property.

Resident George Wagner stated if there is no zoning, unless there are covenants, anyone can start any kind of business any where they want and get away with it. Alex stated the short answer is yes. Unless there is state regulation that prohibits this, nothing prevents someone from running a business unless there are local regulations preventing it. Harris stated there are no covenants. Commissioner Chilcott stated the Commissioners are limited in what they can do.

George asked when the zoning will get done although it will not help them specifically. Commissioner Chilcott stated the interim zoning issue was overturned by the citizens on November 7<sup>th</sup>. The County tried to take a pro active approach.

Dan stated they were not aware of any business until the fence was put up. Alex stated the courts generally rule on the business plan date.

Jim Riddel stated he too is a retired veteran. He asked if there is a financial gain for the church. Hopefully they will see the total devaluation of their property versus the business. He stated they are a nice neighborhood and now our property values will drop. He hoped that Harris would consider their issues also. He understands Harris giving them a chance, but this is at the expense of the homes in the area. This type of business will not make good neighbors.

Dwayne stated this is a short term arrangement, but he is looking at long term. He wants to accommodate the neighbors. He changed the hours, to accommodate the homes. He stated he has the right to work and he likes the area. He is providing jobs for others. If the neighbors tell him what to do he will try to do that.

Commissioner Thompson stated this type of issue is something he has been dealing with since he was elected. They have dealt with motorcycle tracks, ammunition factories, gravel pits and ultimately it comes down to what the county can or can not do. Commissioner Thompson stated he has some good and bad neighbors. He stated they have tried to do zoning and even when they put appropriate uses in certain areas, he anticipates continued problems. He stated the Board tries to do the best they can.

Richard Yurata asked if it comes to a health and safety issue could they file a complaint. Commissioner Chilcott replied yes. Because those people have been there long before the sawmill. Alex stated if there are violations of state law and decay you can go to the Sheriff, Environmental Health and County Attorney. He further stated 'the law is not very good at what you can do; it tells you what you can't do'. Currently there are no regulations that do not prohibit a sawmill next to a house.

Richard Yurata gave some history of the zoning issues in county. Montana and Ravalli County specifically are reluctant to regulate themselves. The Commissioners have to recognize the law. There is more freedom than there is security. The Commissioners have no hammer to tell someone no.

Jim asked what happens if the saw starts at 7:30 a.m. instead of 10:00 a.m. Dwayne stated he will not let that happen and he will pass out a fact sheet for their business. He stated he has a lot to do to please the neighbors before he gets started.

Kathryn addressed the water supply. Most of them are on wells and someday there will be an end to the water supply. Alex stated the state addresses this issue. If you have concerns about water they need to be directed to DNRC or other state agencies.

Dwayne stated his water comes from the city (filling their tanks).

Richard Yurata stated the county does not have the water to support any conclusion for this. The proposed water quality district will help us in that endeavor. Morgan stated he does not know the well log information but it should be close to the valley floor and it should not be a problem. Kathryn stated some neighbors in the area have already run out of water.

Richard stated Dwayne's water will come from the city. Alex stated the water issue is not a county concern; it is a state concern.

Richard appreciates Dwayne's generous consideration for his hours to run the chain saw. The neighbors thanked the Commissioners for their time.

In other business the Board met for various administrative issues as follows:

Commissioner Thompson made motions to approve the following Resolutions:

- Resolution 2100 which allows the Sheriff to crush cars that are no longer of value to the county. Commissioner Lyons seconded the motion and all voted "aye"
- Resolution 2101 which allows the Sheriff to sell cars that are no longer a value to the county but have enough value to be sold to a private party or auction service. Commissioner Lyons seconded the motion and all voted "aye".
- Resolution No. 2102 which sells the International dump truck that has been utilized at the airport due to the new snow plow under the Airport Grant. Commissioner Lyons seconded the motion and all voted "aye".
- Resolution No. 2103 which sells the old pick up at the airport that is no longer of value to the county. Commissioner Lyons seconded the motion and all voted "aye".

Commissioner Thompson made a motion to grant final approval to Meadow Vista Tracts Lot 13 A based on Planning Staff's recommendation. Commissioner Lyons seconded the motion and all voted "aye".

The Board also addressed the MACo/JPIA loss control action plan for Workers Compensation. Commissioner Thompson made a motion to accept the recommendation from MACo for the work comp pool program (Option A) and to appoint Western States Insurance as the agent of record. Commissioner Lyons seconded the motion and all voted "aye". It was noted MACo will pay 50% of the agent of record's commission the first year. If a good history is shown further reduction may occur. The Board asked Glenda to set up an appointment with the Agent of Record Fred Thomas to execute this agreement.

In other business, Commissioner Chilcott participated in a MACo conference call with the Scholarship Committee.